IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1261 OF 2005

Seema D.Jadhav. ...Petitioner.

Versus

Maharashtra General Kamgar Union, Mumbai. ...Respondent.

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Mr. P.K.Rele for the Petitioner.

Mr. N.M. Ganguli for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

May 2, 2005.

ORAL JUDGMENT:

This petition arises out of an order of the Industrial Court dated 9th March 2005 allowing a complaint inter alia under Item 9 of schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Petitioner is a proprietor of a Gas Agency. The Petitioner took over the Gas Agency from an establishment by the name of Dadar Gas Service in November 1997. Several workmen had been engaged by the

erstwhile gas agency and thereafter, by the Petitioner as delivery boys for a long period of time, some of them upto 11 years, when the complaint was instituted in December 1999. The grievance of the complainant-workmen was that they were not being paid the minimum wages due under the law and they were not granted the benefit of other statutory provisions. Initially, each of the delivery boys was paid a commission at the rate of Rs.2 per cylinder which has been increased after August 2004 to Rs.4 per cylinder delivered. The Industrial Court has come to the conclusion that there was a breach of Item 9 of Schedule IV and has directed the Petitioner to pay to the workmen minimum wages applicable to a commercial establishment under the provisions of the Bombay Shops and Establishments Act, 1948 together with other statutory benefits from January 1998.

2. Before the Industrial Court, the Petitiner contended that there was no relationship of employer and employee. This question has been answered by the Industrial Court by holding that there exists an admitted relationship of employer and employee between

the Petitioner and the delivery boys. Now it is an admitted position that there is no intermediary such as a Contractor in existence. In the course of her cross-examination, the Petitioner stated that after the allotment of the agency to her, she had taken over the entire staff, including the delivery boys of Dadar Gas Service as advised by Bharat Petroleum Corporation Ltd. from whom the agency was obtained. The evidence of the Petitioner is, in my view, sufficient to hold that there exists an undisputed and indisputable relationship of employer and employee. The material part of the evidence reads thus:

> "After allotment of agency to me I had taken over the entire staff including the delivery boys of Dadar Gas Services as advised by BPCL. No appointment letters were issued to any of those employees by me. ... Some of the delivery boys are working with me since the date of allotment of agency to me whereas some of them have been engaged subsequently and all of them are continuously working since then with me." (emphasis supplied).

3. Counsel appearing on behalf of the Petitioner submitted that the delivery boys in the present case were being paid on a piece

rated basis at the rate of Rs.4 per cylinder and that in the course of the trial of a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, it was not open to the Industrial Court to alter the basis of payment. Having considered the submission, I am not inclined to accept it for more than one reason. First and foremost, it may be noted that the schedule to the Minimum Wages Act, 1948, contains, in so far as the State of Maharashtra is concerned, Entry 17 which deals with employment in any establishment or commercial establishment. The establishment of the Petitioner is clearly a commercial establishment within the meaning of Section 2(4) of the Bombay Shops and Establishments Act, 1948 which expression is defined to mean an establishment which carries out any business, trade or profession or any work in connection with or incidental or ancillary to, any business, trade or profession. The Petitioner cannot be heard to deny the liability to pay minimum wages which are fixed in accordance with the provisions of the Minimum Wages Act, 1948. The Industrial Court, in my view, has not altered the basis of payment or the mode of payment but has

directed that the Petitioner shall comply with the provisions of the Minimum Wages Act, 1948 which recognises the entitlement of the workmen to the minimum wages that are prescribed in the provisions of law. It is next urged on behalf of the Petitioner that the workmen have no fixed hours during the course of which they are required to render duties. This submission, however, is belied by the evidence of the second witness for the Petitioner who deposed in the course of the trial. Yashwant Krishna Dhuri who was working as Delivery Supervisor with the Petitioner stated that in the morning he hands work orders to the delivery boys for making deliveries to customers. After making deliveries of cylinders, when they return, he stated that he collects the amount from the delivery boys and also accounts for the empty cylinders received from customers. In the evening, he stated, he makes the payment of the commission to the delivery boys at the rate of Rs.4/- per cylinder delivered by them. Cylinders are checked at the time when delivery is given to the delivery boys as well as while receiving the empty cylinders. The Petitioner in the course of her evidence also deposed that the Supervisor gives orders to

delivery boys in accordance with the area to which they pertain for effecting delivery of cylinders to customers. The Supervisor, it is stated, would take delivery of cylinders and empty cylinders after they are received back.. One of the complainant-workmen stepped into the witness box. He deposed that he was required to do the work of delivery of cylinders to customers from 9 a.m. to 6 p.m. What is most important is that the evidence of the workman is consistent with the evidence of the delivery Supervisor who deposed on behalf of the management to the effect that orders are distributed in the morning to the delivery boys and in the evening, final accounting is done by checking empty cylinders against which payments are made to the workmen. The workmen in the present case have been undisputedly employed by the Petitioner. It is clear from the evidence of the Petitioner that neither are any records maintained about the payments to delivery boys, nor are their signatures are taken on any document at any time. The Petitioner was not even aware about the timing of attendance of delivery boys every morning. The Supervisor has also deposed that neither attendance cards are issued to the

delivery boys, nor is a muster maintained. A breach of the mandatory provisions of industrial law constitutes a breach of Item 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It is settled law that compliance with the provisions of industrial legislation is an implicit part of every contract of employment and of an agreement between the employer and the workmen. The Industrial Court is not in error in holding that there was a breach of Item 9 of Schedule IV upon a failure of the Petitioner to pay the minimum wages that were payable in law to the workmen.

4. The Industrial Court has granted relief with effect from the commencement of the calender year immediately after the Petitioner took over the Gas Agency. In my view, having regard to the facts and circumstances, it would be appropriate if the grant of relief is made effective from the date of the institution of the complaint before the Industrial Court on 21st December 1999. Save and except for the aforesaid modification, the rest of the order of the Industrial Court is

affirmed. The Industrial Court has directed the Petitioner to pay minimum wages together with other statutory benefits which shall now as directed above operate effective from the institution of the complaint before the Industrial Court. With the aforesaid modification, the petition shall stand disposed of. No order as to costs.

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